IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Bail Appl..No. 5180 of 2007()

CRIME NO. 231/07 OF SULTHAN BATHERY POLICE STATION
CRMP.949/2007 of DISTRICT COURT, KALPETTA

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PETITIONER/5TH ACCUSED:

T.P. ABDUL SHUKOOR,
S/O. T.P. ABDURAHIMAN, AGED 32 YEARS,
THEKKEPURAYIL HOUSE, NENMENI AMSOM,PUTHANKUNNE P.O
SULTHAN BATHERY TALUK, WAYANAD.

BY ADV. SRI.S.M.PRASANTH

RESPONDENTS: COMPLAINANT:

THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5180 of 2007

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Dated this the 11th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioner is the additional 5th suspected accused. The crime is registered under Section 307 I.P.C. and Section 5 of the Explosive Substances Act. The petitioner apprehends imminent arrest.

2. At about 4.30 a.m. on 11.5.2007 a motor cycle came near the house of the defacto complainant. The motor cycle was stopped. Some explosive substance was thrown at the house of the defacto complainant. It resulted in an explosion. The motor cycle sped away from the scene. The defacto complainant had heard the arrival of the motor cycle and the later explosion that took place. He knew that the motor cycle has sped away after the explosion. In the F.I. statement lodged by him promptly, he aired his suspicion that some miscreants had thrown explosive substances to his house in an attempt to do away with him. He had suspected four persons. He showed them as suspected accused 1 to 4. Investigation commenced. Accused 1 and 2 have been arrested subsequently, it is submitted. Surprisingly, the

case diary does not show the statements of A1 and A2, (whether that amounts to a confession or not) recorded by the Investigating Officer. Less said about the quality of investigation on that aspect, the better. The Investigators groped in the dark for some days. They knew that the defacto complainant, a political activist, had rivals, who entertained animus against him. There were reasons to suspect that the defacto complainant was chosen for a counter attack consequent to an attack on some other political activist in which the role of the defacto complaint was suspected. Be that as it may, the investigators have now come to realise/suspect that the motor cycle which came to the scene and sped away thereafter is the one belonging to the petitioner. There are some indications to show that the petitioner along with another was present at or near the scene at about the time of occurrence. The investigators want to interrogate the petitioner. They are hopeful that better light will be thrown on the circumstance of the crime and the person responsible, if the petitioner were interrogated. Therefore the petitioner has been arrayed as suspected 5th accused. Investigation is in progress.

3. The learned counsel for the petitioner submits that the suspicion against the petitioner is totally unjustified. Nobody had seen the petitioner

indulging in any overt act. Even now the prosecution does not have such a case. On the date of the occurrence or for several days thereafter no one had raised an allegation that the petitioner was seen at or near the place of occurrence at the time of occurrence or around that. The belated allegations to that effect have come because of the interest of the defacto complainant to vex and harass the petitioner. In these circumstances it is submitted that the petitioner does not deserve to endure the trauma of arrest and detention. The petitioner may be saved of the trauma of arrest by issuing directions under Section 438 Cr.P.C., submits the counsel.

4. The learned Prosecutor opposes the application. He submits that the investigation is at a very sensitive stage. The petitioner has to be interrogated and arrested, if necessary. Permitting the petitioner to arm himself with an order of anticipatory bail would virtually hamper the progress of the investigation. There are no circumstances at all in this case which would suggest or warrant the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. The petitioner may be directed to appear before the Investigator or the learned Magistrate having jurisdiction and thereafter seek regular bail in the ordinary course.

5. I have considered all the relevant inputs. I am satisfied in the facts and circumstances of the case that there is merit in the opposition by the learned Prosecutor. I am satisfied that there are no circumstances which can persuade this Court to invoke the extra ordinary equitable discretion under Section 438 Cr.P.C. This I am satisfied is an eminently fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioner appears before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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